IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2075 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AYAR HIRABHAI NARANBHAI - Opponent(s)

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Appearance :
MR IM PANDYA APP for Appellant(s) : 1,
MR VL THAKKAR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 11/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 18-06-2005 by Special Judge, 3rd Fast Track Court, Patan in Special (Atrocity) Case No.11 of 2004 acquitting the respondent accused for the offences punishable u/ss 504 and 506(2) of the I.P. Code and under Section 3 (1) (x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act").

2. We have called for the Record and Proceeding from the Trial Court and the same is available with us. The learned A.P.P. Mr. I.M. Pandya for the State and advocate Mr. V.L. Thakkar for the respondent have provided this Court with necessary copies of the evidence and documents. Appeal is required to be heard finally and upon the request of the learned Advocates for the parties, the appeal is admitted and learned advocate Mr. V.L. Thakkar for the respondent waives service on behalf of the respondent.

3. In brief, prosecution case was that complainant Jethabhai Bhikhabhai Parmar lodged complaint before learned J.M.F.C., at Radhanpur on 12-9-2002 that he had lodged a complaint against respondent accused on 8-9-2002 and keeping grudge of the said complaint, when he was returning home from his field on 11-9-2002 at about 7-00 O'clock in the evening, respondent – accused met him in the chowk of the village and intentionally insulted him by derogatory words referable to his caste saying that what difference did he make by filing complaint and also gave abuses and as he requested him not to give abuses, respondent – accused rushed to beat him; that respondent accused gave threats to kill him and Ishwarbhai Bhikhabhai and Shankerbhai Bhikhabhai who were standing beside him intervened and rescued him.

4. On the basis of complaint filed by Jethabhai Bhikhabhai Parmar learned Magistrate ordered investigation u/s 156(3) of the Code of Criminal Procedure, 1973 and it was sent to Radhanpur Police Station for investigation. It was registered as M. Case 13 of 2004 for the offences punishable u/s

504, 506 (2) of the I.P. Code and u/s 3 (1) (x) of the Atrocities Act by Radhanpur Police Station and investigation was started. During the course of investigation statement of witnesses were recorded, and panchanama of scene of offence was drawn.

5. On completion of investigation, charge sheet was laid before learned J.M.F.C., Radhanpur. As the offence was exclusively triable by Special Court, the case was committed to the Special Court, Patan and it was registered as Special (Atrocity) Case No. 11 of 2004. Learned Special Judge, Patan framed charge at Exh.10 against the accused for the offences punishable u/ss 504 and 506(2) of the I.P. Code and u/s 3 (1) (x) of the Atrocities Act. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge.

6. After hearing learned A.P.P. for the State and learned advocate for the accused, trial Court found that prosecution failed to prove the charge levelled against the accused

and consequently acquitted the accused for the offences charged against him. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

7. After hearing learned A.P.P. for the State, we have admitted the appeal. As the record and proceedings were called for, with the consent of the learned A.P.P. and the learned advocate for the accused Mr. V.L. Thakkar, we have finally heard and decided this appeal.

8. We have heard learned A.P.P. for the appellant State and learned advocate Mr.V.L. Thakkar for the accused at length and in great detail

9. In order to prove the charge levelled against the accused under the Atrocities Act, prosecution is required to prove that the accused being a member of Scheduled Caste and Scheduled Tribe, was insulted or intimidated with intent to humiliate him in public place within pubic view by a person not being a member of a scheduled caste or scheduled tribe.

10. In this case, the prosecution did not produce any evidence to indicate that the complainant was a member of scheduled caste or scheduled tribe and he was insulted in public place within public view being a member of scheduled caste or scheduled tribe. It is true that complainant P.W. 1 Jethabhai, in his deposition, deposed that he belongs to Harijan caste but there is no documentary evidence in that regard. In absence of cogent evidence in that regard, the learned trial Judge was justified in acquitting the respondent – accused for the offence punishable u/s 3 (1) (x) of the Atrocities Act.

11. As regards the charge for the offences punishable u/s 504 – 506 (2) of the I.P. Code, the prosecution examined P.W. 1 Jethabhai Bhikhabhai at Exh. 14. According to the witness when he was returning home, the accused gave him abuses and insulted him by derogatory words referable to his caste and also gave threats. According to him, his brother Shankerbhai who was following him rescued him and thereafter complaint was

filed in Radhanpur Court. In the cross-examination, the witness admitted that he is illiterate and his younger brother Ishwarbhai had dictated the complaint. The witness also admitted that earlier he did not file any complaint against the respondent – accused. The witness also deposed that before filing present complaint all the three brothers got together and it was decided that as Ishwarbhai was literate he would dictate complaint and accordingly Ishwarbhai dictated the complaint. It appears that the witness did not file complaint at the police station but filed it in the Court. In view of this evidence it becomes clear that the respondent was roped into the offence after deliberation between the complainant and his brothers. It is also significant that the complaint was not filed on the day of incident but was filed in the court on the next day. Therefore, the evidence of this witness cannot be relied upon. Moreover, the evidence of this witness indicates that the place of incident is chowk of village and there is a temple in the chowk. The alleged incident occurred in the evening. However, strangely no independent witness has been examined.

According to the prosecution, the reason for the incident was grudge in respect of earlier complaint allegedly filed by the complainant against the accused. However, P.W. 1 Jethabhai admitted that before the present complaint he did not file any complaint against the respondent – accused. Therefore, the prosecution case with regard to enmity on account of earlier complaint does not get support. It also appears from the evidence of this witness that his brother Shankerbhai rescued him. However, cross-examination indicates that Ishwarbhai who was following rescued him. This fact is not stated in the complaint. The witness vaguely deposed that the accused gave him abuses and rushed to assault him. On overall reappreciation of the evidence of this witness, in our view, there was delay in filing the complaint which has not been explained and the prosecution failed to establish motive for commission of offence. The complaint was not dictated by the witness. Therefore, the evidence of this witness was rightly not believed by the learned trial Judge.

12. The prosecution produced complaint at Exh.17. It appears from the complaint that on account of previous enmity the respondent – accused allegedly gave threats to the complainant. As discussed earlier, analysing the evidence, in our view, complaint Exh. 17 does not inspire confidence.

13. The prosecution examined P.W. 2 Jashwantsinh Bhaluji Parmar at Exh. 15 who was Police Station Officer (PSO) of Radhanpur Police Station. The witness admitted that after registering the offence, he did not inform Dy. S.P.

14. The prosecution also examined P.W. 3 Madhabhai Lagdhirbhai at Exh. 19. However, the evidence of this witness does not throw any light on the prosecution case.

15. The prosecution examined P.W. 4 Ishwarbhai Bhikhabhai at Exh. 20. The witness was the younger brother of the complainant. The witness denied that he dictated the complaint. He also denied that earlier his brother P.W. 1 Jethabhai did not lodge any complaint against the respondent – accused.

The evidence of this witness is contrary to the evidence of P.W.1 Jethabhai. Therefore, the evidence of this witness cannot be relied upon.

16. The prosecution also examined another brother of complainant P.W. 5 Shankerbhai Bhikhabhai Parmar at Exh. 21. According to this witness, he, his brother Ishwarbhai and complainant Jethabhai were returning home and when they reached at chowk near the temple of the village, at about 7-00 O'clock, the incident occurred. The evidence of this witness indicates that P.W. 1 Jethabhai was illiterate and the complaint was dictated by P.W.4 Ishwarbhai. The evidence of this witness is contrary to the evidence of P.W. 1 Jethabhai and P.W. 4 Ishwarbhai. None of the witness has deposed about alleged threats and abuses. Even there is contradiction in that regard, therefore, the oral evidence with regard to abuses and threats cannot be believed.

17. In view of above, it becomes clear that alleged incident took place at a public place. However, strangely statements of

independent witnesses have not been recorded by the investigating agency. The witnesses examined by the prosecution are brothers and therefore naturally they are interested witnesses. In view of peculiar circumstances of the case and nature of offence, it would not be safe to rely upon the evidence of interested witnesses more so when it emerges that the complaint was filed after deliberation and it was not dictated by the person against whom alleged offence was committed. Therefore, in our view, the prosecution case that the respondent – accused gave abuses and threats to the complainant cannot be believed.

18. The prosecution examined Investigating Officer P.W. 6 Pritamdas Shankerlal Parmar at Exh. 20. According to the witness he was Head-Constable at Radhanpur Police Station and he was directed to investigate the offence. The witness admitted that only Dy. S.P. is the authority to investigate into offence under the Atrocities Act. In view of this, it is clear that the witness was not authorised to carry out investigation and therefore the prosecution case cannot be

believed.

19. For the foregoing reasons, in our view, the learned trial Judge was justified in recording acquittal of the accused and no interference is warranted in the impugned judgment. Hence, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/